

**STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawai'i
April 8, 2010**

Acceptance Date: November 25, 2009
180-Day Expiration Date: May 24, 2010

**Board of Land and
Natural Resources
State of Hawai'i
Honolulu, Hawai'i**

REGARDING: Conservation District Use Application (CDUA) HA-3530 for Security Gates on Private Access Road for Keawaiki Beach Lots

APPLICANT: Charles and Diane Bundrant

LANDOWNER: Kamehameha Schools

LOCATION: Kahauloa, South Kona, Hawai'i

TMK: (3) 8-3-005:001, 020, and 021

AREA/PARCEL: 26.57 acres

AREA/USE: 0.01 acres

SUBZONE: General Subzone

DESCRIPTION OF AREA/CURRENT USE:

The applicant proposes erecting two security gates on an existing private access road (informally called Keawaiki Road) for the Keawaiki Beach Lots in Kahauloa, South Kona, Hawai'i, TMK: (3) 8-3-005:001, 020, and 021 (**Exhibits 1 & 2**). The properties, currently leased by Chuck and Diane Bundrant, are owned by Kamehameha Schools, and lie within the General subzone of the Conservation District (**Exhibit 3**).

Currently, the private Keawaiki Road system is also used as an alternate public route to Ke'ei Road. According to the applicant, unauthorized camping, off-road driving, and vandalism of archaeological sites have occurred on Keawaiki Road. The purpose of this project is to provide security for the 17 properties at Keawaiki Beach Lots and to help protect the archaeological sites on the property.

The subject property is traversed by two unpaved mauka-makai roads from Pu'u honua Road, which is the County road connecting Kealakekua Bay with Honaunau. The more southerly

mauka-makai road is called Ke‘ei Beach Road or Ke‘ei Road and it provides the access to Ke‘ei Village and the shoreline. The more northerly mauka-makai road, informally called Keawaiki Road, is an 800-foot long private road to the roughly 1,400 foot long north-south road that fronts the Keawaiki Beach Lots and connects the two mauka-makai roads at their makai ends (**Exhibit 4**).

The applicant notes that although the gating would exclude non-Keawaiki owners’ vehicles from this part of Keawaiki, the roads do not provide public access to the shoreline areas, as the entire shoreline is fronted by private properties with no shoreline access easements. Mauka-makai shoreline access is available on the properties immediately south at Ke‘ei and to the north at Manini Beach. Although the shoreline in front of the Keawaiki Beach Lots is rough and uneven, lateral shoreline access from the north or south is available along this roughly quarter-mile stretch of shoreline for those who traverse it to fish, gather, and dive on the rocky shoreline.

PROPOSED USE:

The applicant, Chuck and Diane Bundrant, lessees under the landowner Kamehameha Schools, proposes to erect two vehicular gates on each end of Keawaiki Road to provide security for the 17 properties at Keawaiki Beach Lots that take access from this road, and to help protect the archaeological sites on the property. The action is in conformance with the requirements of their lease from Kamehameha Schools.

The applicant proposes to install a solar powered, locked, keypad gate on the access road entrance just makai of Pu‘uhonua Road to which the applicant and all lot owners would have access. The access road entrance from Ke‘ei Beach Road would be a manually operated, swinging pipe gate. A special walkway will be constructed to allow pedestrians to walk around the gates, and pedestrian access on Keawaiki Road will continue to be allowed (**Exhibit 5**).

The gates will cost less than \$50,000 and construction will take approximately two (2) weeks once all permits are obtained. All funding for the gates is private, no public funds are involved, and work would begin as soon as all permits are obtained.

SUMMARY OF COMMENTS:

CDUA HA-3530 was referred to the following agencies for review and comment: DLNR – Hawai‘i District Land Office, Division of Forestry and Wildlife (DOFAW) Na Ala Hele, Historic Preservation Division (SHPD), Engineering Division, and Division of Conservation and Resource Enforcement (DOCARE); Office of Hawaiian Affairs (OHA); Office of Environmental Quality Control (OEQC); Department of Health (DOH); State Civil Defense; County of Hawai‘i – Planning Department, Public Works Department, Police Department, Fire Department, and Civil Defense Agency; National Park Service – Ala Kahakai Trail; and the Kealahou Public Library. The following comments were received:

DLNR-Hawai‘i District Land Office

No comments.

DLNR-DOFAW Na Ala Hele

No comments.

Staff notes that Na Ala Hele subsequently provided comment on the County SMA Use Permit Assessment Application (SAA 09-000496) for the proposed project (Exhibit 6). Na Ala Hele noted that examination of available records fail to disclose the alignment of a trail on a map predating 1892. Without the necessary evidence documenting the trail's existence in accord with the mandates of the Highways Act of 1892, ownership of said trail could not be confirmed in favor of the State of Hawai'i.

DLNR-Engineering

Engineering confirmed that the project site, according to the Flood Insurance Rate Map (FIRM) is located in Zone X. The Flood Insurance Program does not have any regulations for developments within Zone X.

DLNR-DOCARE

No comments.

OHA

No objections to the proposal.

DOH-Wastewater Branch

No objections to the proposal.

State Civil Defense

No comments.

Hawai'i County Planning Department

A Special Management Area (SMA) Use Permit Assessment Application (SAA 09-000496) was submitted to the Planning Department on October 22, 2009. By letter dated November 19, 2009, a determination was made that either a SMA minor or a SMA major permit would be required for the project.

The Planning Department inquired about a determination as to whether Keawaiki Road is considered a trail under the Highways Act of 1892.

Staff notes that Na Ala Hele subsequently provided comment on the County SMA Use Permit Assessment Application (SAA 09-000496) for the proposed project (Exhibit 6). Na Ala Hele noted that examination of available records fail to disclose the alignment of a trail on a map predating 1892. Without the necessary evidence documenting the trail's existence in accord with the mandates of the Highways Act of 1892, ownership of said trail could not be confirmed in favor of the State of Hawai'i.

Hawai'i County Public Works Department

No significant impact expected from project provided that gate is set back from the County road.

Hawai'i County Police Department

The Police Department will not maintain gate codes, combinations, or keys for gates leading onto private property and the responsibility to maintain and ensure unimpeded access to the property for emergency responders lies with the property owner.

Applicant's response: The applicants intend to install a "Knox Box" type of lock on the subject gate. The applicants must apply through the Fire Department to register and obtain the necessary lock. Emergency services have a universal key that will open all Knox Boxes.

Hawai'i County Fire Department

No comments.

Gordon Leslie, Malama Pono Kealahou Cultural and Planning Committee

Mr. Leslie had comments regarding information contained in the draft environmental assessment (EA), particularly: 1) Misleading information represented in the report that came from a telephone conversation with Mr. Leslie; 2) Archaeological sites bulldozed by the development of the subdivision; 3) Destruction of the ancient Hawaiian trail – Ala Kahakai by the development; 4) Emergency use of Kealahou Road; 5) Past Bishop Estate plans for Kealahou subdivision; 6) Archaeological preservation plan requirement; 7) Security for the lot owners; 8) Creation of a "gated" community; 9) Inclusion of pre-consultation comments in draft EA on original project that had different scope than the current proposed project; 10) Representation of the activeness of the Malama Pono Kealahou community group; 11) Need for a community meeting for this application; and 12) Recommendation to applicant to beautify entrance to Kealahou Road without the gates. **Exhibit 7** contains the full letter and response.

Applicant's Response: 1) The information Mr. Leslie referred to as incorrect have been removed from the Cultural Impact Assessment report and the Final EA; 2 and 3) The applicant had no part in the destruction of the sites and the proposed action protects the remaining sites; 4) Kealahou Road is longer in distance, although better maintained by the private owners, than Ke'e Road, therefore taking slightly less time to travel. Better maintenance of the County road – Ke'e Road – would provide faster access to Ke'e. The "knox box" lock on the gates will be accessible for emergency service providers; 5) Former Bishop Estate plans are not relevant to this application; 6) SHPD has reviewed the proposed project and determined that no historic properties would be affected, and SHPD did not recommend preparation of a preservation plan; 7) Concern about security is based on reports from lot residents who have personal knowledge of problems, including illegal camping, theft, drug use, and reckless driving in Kealahou Lots; 8) Applicant notes that the County does not maintain the private road, and therefore, having it open to the public creates a burden on the lot owners. Furthermore, the private roads will still be open to public pedestrian access, unlike a gated community; 9) The original proposed action, although included more aspects such as a single-family home and landscaping, included the gates, so inclusion of the pre-consultation responses was appropriate; 10) Applicant thanked Mr. Leslie for clarification about the active status of Malama Pono Kealahou; 11) The applicant will comply with HAR Section 13-5-40 requiring public hearing (***Staff notes that public hearing is not required for this action***); and 12) Applicant acknowledged comment.

Dennis Kau'i Hart

Mr. Hart provided comments regarding possible violations on the coastal frontage of several of the Keawaiki Lot owners. He is concerned about the limited access to the coastline in this area for picking opihi, shoreline fishing, or gathering wana. He also notes that the limited access makes it possible for these violations to not be seen, and erecting gates will further hide the violations.

Mr. Hart believes that the subject private road was built for the public in place of the destruction of the Ala Kahakai Trail, and the public has been using this road since the 1960s. Mr. Hart states: "Ala Kahakai, Trail by the sea. Therefore, this road is considered our trail. If this road is not considered as our trail, we want our trail back." Mr. Hart refers to the Highways Act of 1892 and the "Splintered Paddle Law." **Exhibit 8** contains the full letter and response.

Applicant's Response: The alleged destruction of a trail that is not on the subject property is not related to the proposed gating of these private roads. Na Ala Hele researched the history of the trails in this area and determined that there was no evidence of this trail alignment on any map predating 1892, and that absent of such evidence, ownership of the trail could not be confirmed in favor of the State of Hawai'i. Applicant notes that pedestrian access will not be denied on these private roads, only vehicular gating is proposed.

Staff notes that Na Ala Hele subsequently provided comment on the County SMA Use Permit Assessment Application (SAA 09-000496) for the proposed project (Exhibit 6). Na Ala Hele noted that examination of available records fail to disclose the alignment of a trail on a map predating 1892. Without the necessary evidence documenting the trail's existence in accord with the mandates of the Highways Act of 1892, ownership of said trail could not be confirmed in favor of the State of Hawai'i.

ANALYSIS:

Following review and acceptance for processing, the applicant was notified, by letter dated November 23, 2009 that:

1. The proposed use is identified within the General subzone of the Conservation District, pursuant to Chapter 13-5, Hawai'i Administrative Rules (HAR) §13-5-25, G-2, LAND USES NOT PREVIOUSLY IDENTIFIED (D-1);
2. Pursuant to §13-5-40(4), HAR, HEARINGS, a public hearing will not be required; and
3. In conformance with Chapter 343, Hawai'i Revised Statutes (HRS), as amended, and Chapter 11-200, HAR, a finding of no significant impact (FONSI) to the environment is anticipated for the proposed project. The draft environmental assessment (DEA) for the project will be submitted to OEQC to be published in the December 8, 2009 issue of the *Environmental Notice*.

Staff notes that the DEA was published in OEQC's *Environmental Notice* on December 8, 2009. A FONSI for the project was issued on February 2, 2010 and published in the February 23, 2010 issue of the *Environmental Notice*.

Negative action, as required by law, on the application by the Board of Land and Natural Resources can be expected should the applicant fail to obtain from the County thirty (30) days prior to the 180-day expiration date, one (1) of the following:

1. A determination that the proposed development is outside the Special Management Area (SMA);
2. A determination that the proposed development is exempt from the provisions of the County Ordinance and/or regulation specific to Section 205A-29(b), HRS; or
3. A Special Management Area (SMA) permit for the proposed development.

Staff notes that the Hawai'i Planning Department issued the project a Special Management Area Minor Permit No. 10-000145 on March 22, 2010.

CONSERVATION CRITERIA:

HAR Section 13-5-30 provides eight specific criteria that the Department or Board shall apply to proposed land uses within the Conservation District. Land uses must conform to the following criteria:

- 1. The proposed land use is consistent with the purpose of the conservation district.*

The purpose of the Conservation District is to conserve, protect, and preserve the important natural resources of the State through appropriate management and use to promote long-term sustainability and the public health, safety, and welfare.

The proposed action involves erecting two vehicular gates on each end of Keawaiki Road to provide security for the 17 properties at Keawaiki Beach Lots that take access from this road, and to help protect the archaeological sites on the property. A special walkway will be constructed to allow pedestrians access around the gates, and pedestrian access on Keawaiki Road will continue to be allowed.

Staff notes that the project is consistent with the purpose of the Conservation District.

- 2. The proposed land use is consistent with the objectives of the subzone of the land on which the use will occur.*

The property lies within the General subzone. The objective of the General subzone is to provide for areas possessing unique developmental qualities which complement the natural resources of the area.

The proposed action is an identified land use within the General subzone of the Conservation District, according to Chapter 13-5, Hawai'i Administrative Rules (HAR) §13-5-25, G-2, LAND USES NOT PREVIOUSLY IDENTIFIED (D-1) *Land uses not previously identified in sections 13-5-22, 23 or 24, which are consistent with the objectives of the general subzone.*

The proposed action involves erecting gates to prevent vehicular access on private roads. According to the applicant, unauthorized camping, off-road driving, and vandalism of archaeological sites have occurred on Keawaiki Road. The purpose of the gates will be to provide security for the 17 properties at Keawaiki Beach Lots and the archaeological sites on the property.

Staff notes that the project is consistent with the objective of the General subzone.

3. *The proposed land use complies with the provisions and guidelines contained in chapter 205A, HRS, entitled "Coastal Zone Management," where applicable.*

The applicant provided the following assessment regarding objectives of Chapter 205A, HRS and the impacts the proposed action will have:

Recreational Resources: The proposed gates are approximately 300 feet and 800 feet from the shoreline and will not restrict any shoreline uses such as hiking, fishing, or water sports.

Historic Resources: According to the applicant, vandalism of archaeological sites has occurred on Keawaiki Road. The purpose of the gates will be to provide security for the 17 properties at Keawaiki Beach Lots and the archaeological sites on the property.

Scenic and Open Space Resources: Neither the viewplanes to and along the shoreline, towards the property, nor the viewplane from any adjoining roadway, would be adversely affected, as the gates are set well back from the ocean.

Coastal Ecosystems: It is expected that the project will not result in any impact on the biological or economic aspects of the coastal ecosystem. The project site is not situated over any major natural drainage system or water feature that would flow into the nearby coastal system. The property contains few native plants and none that are uncommon.

Economic Uses: The project does not impact economic uses.

Coastal Hazards: No floodplains are present in the area.

Managing Development: The proposed action will not subdivide the property and will not lead to any increase in intensity of use beyond currently permitted uses.

Public Participation: The public will be informed of the project through the Chapter 343, HRS and CDUA process.

Beach Protection: In terms of beach protection, construction is set back hundreds of feet from the shoreline, will not require extensive ground disruption and would not affect any beaches nor adversely affect public use and recreation of the shoreline in this area. The current private roads do not provide public access to the shoreline or any park facilities.

Marine Resources: No impacts on marine resources are likely to occur.

Staff notes the project complies with CZM provisions and guidelines as identified in Chapter 205A, HRS.

4. *The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.*

The proposed action involves erecting gates to prevent vehicular access on private roads. The subject property is located immediately adjacent and mauka of a residential neighborhood, Keawaiki Beach Lots, developed in 1968, with single family residences already present.

Due to the lack of native ecosystems and threatened and endangered plant species, no adverse impacts are expected to occur as a result of the construction of the gate improvements.

Construction activities will generate temporary, intermittent, short-term impacts affecting air quality and noise levels. This will be mitigated with established construction practices that will limit the construction activities to day time hours. Only minor ground disturbance will be required for construction. There will be no development generated runoff directed toward adjacent properties.

Staff notes that the proposed project will not have substantial adverse impact to existing natural resources within the surrounding area, community, or region.

5. *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding area, appropriate to the physical condition and capabilities of the specific parcel or parcels.*

The subject parcels are immediately adjacent and mauka of the Keawaiki Beach Lots, which were developed as a residential subdivision in 1968. The proposed action is compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific property. The installation of the gates is a specific requirement of the landowner in their lease to the applicants for this property.

Staff notes the proposed project is compatible with the locality, and surrounding area, and is appropriate to the physical condition and capabilities of the subject parcel.

6. *The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.*

Air quality and noise levels will not be affected, except for minor temporary effects during the gate construction period. No significant impact to the visual scenery is expected as the gates are designed to blend into the surrounding area. The site is not described in any State or County plan that identifies important views for the area.

Staff feels that the proposed action will not have a significant impact upon existing physical and environmental aspects of the land.

7. *Subdivision of land will not be utilized to increase the intensity of land uses in the conservation district.*

The proposed project does not include subdivision.

8. *The proposed land use will not be materially detrimental to the public health, safety, and welfare.*

All structures associated with the proposed gates would conform to the Uniform Building Code. Although the project is located in an area exposed to a certain amount of hazard from lava flows and earthquake, the project presents no additional hazard to the public.

Staff notes that the proposed project will not be materially detrimental to the public's health, safety, and welfare.

DISCUSSION:

The project is an identified land use within the General subzone of the Conservation District, according to Chapter 13-5, Hawai'i Administrative Rules (HAR) §13-5-25, G-2, LAND USES NOT PREVIOUSLY IDENTIFIED (D-1) *Land uses not previously identified in sections 13-5-22, 23 or 24, which are consistent with the objectives of the general subzone.* The CDUA requires Board approval. It is staff's opinion that this proposed action meets the definition of the above cited identified use.

Staff notes that the applicant proposes to erect two gates on each end of Keawaiki Road to provide security for the 17 properties at Keawaiki Beach Lots that take access from this road and to help protect the archaeological sites on the property. A special walkway will be constructed to allow pedestrians access around the gates and pedestrian access on Keawaiki Road will continue to be allowed.

According to the applicant, unauthorized camping, off-road driving, and vandalism of archaeological sites have occurred on Keawaiki Road. The purpose of the gates will be to provide security for the 17 properties at Keawaiki Beach Lots and the archaeological sites on the property.

As discussed in the "Summary of Comments" section, concern was brought up regarding the destruction of the Ala Kahakai trail by the Keawaiki subdivision development, and that the subject private roads "replaced" the traditional access trail that was lost. Therefore, the construction of gates would prohibit the public's right to access the coastline in the area.

Staff notes that Na Ala Hele subsequently provided comment on the County SMA Use Permit Assessment Application (SAA 09-000496) for the proposed project (Exhibit 6). Na Ala Hele noted that examination of available records fail to disclose the alignment of a trail on a map predating 1892. Without the necessary evidence documenting the trail's existence in accord with

the mandates of the Highways Act of 1892, ownership of said trail could not be confirmed in favor of the State of Hawai'i.

Applicant notes that pedestrian access will not be denied on these private roads, only vehicular gating is proposed.

Staff notes that the action will not have adverse impacts to the environment. The proposed project is expected to curtail unauthorized camping, off-road driving, and vandalism of archaeological sites that has occurred on the property.

As such, Staff recommends the following:

RECOMMENDATION:

Staff recommends that the Board of Land and Natural Resources **APPROVE CDUA HA-3530** for the Security Gates on Private Access Road for Keawaiki Beach Lots project, subject to the following terms and conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the Federal, State, and County governments, and applicable parts of Chapter 13-5, HAR;
2. The applicant, its successors, and assigns, shall indemnify and hold the State of Hawai'i harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit;
3. The applicant shall comply with all applicable Department of Health (DOH) administrative rules;
4. The applicant shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;
5. Any work or construction to be done on the land shall be initiated within one (1) year of the approval of such use, in accordance with construction plans that have been signed by the Chairperson, and, unless otherwise authorized, shall be completed within three (3) years of the approval of such use. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;
6. All representations relative to mitigation set forth in the accepted environmental assessment or impact statement for the proposed use are incorporated as conditions of the permit;
7. The applicant understands and agrees that the permit does not convey any vested right(s) or exclusive privilege;

8. In issuing the permit, the Department and Board have relied on the information and data which the applicant has provided in connection with the permit application. If, subsequent to the issuance of the permit such information and data prove to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part, and the Department may, in addition, institute appropriate legal proceedings;
9. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard within a time frame and manner prescribed by the Chairperson;
10. The applicant acknowledges that the approved work shall not hamper, impede or otherwise limit the exercise of traditional, customary or religious practices in the immediate area, to the extent such practices are provided for by the Constitution of the State of Hawai'i, and by Hawai'i statutory and case law;
11. Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact SHPD (808-692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;
12. Other terms and conditions as prescribed by the Board; and
13. Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Respectfully Submitted,



Audrey Barker, Staff Planner
Office of Conservation and Coastal Lands

Approved for Submittal:

By:



LAURA H. THIELEN, Chairperson
Board of Land and Natural Resources

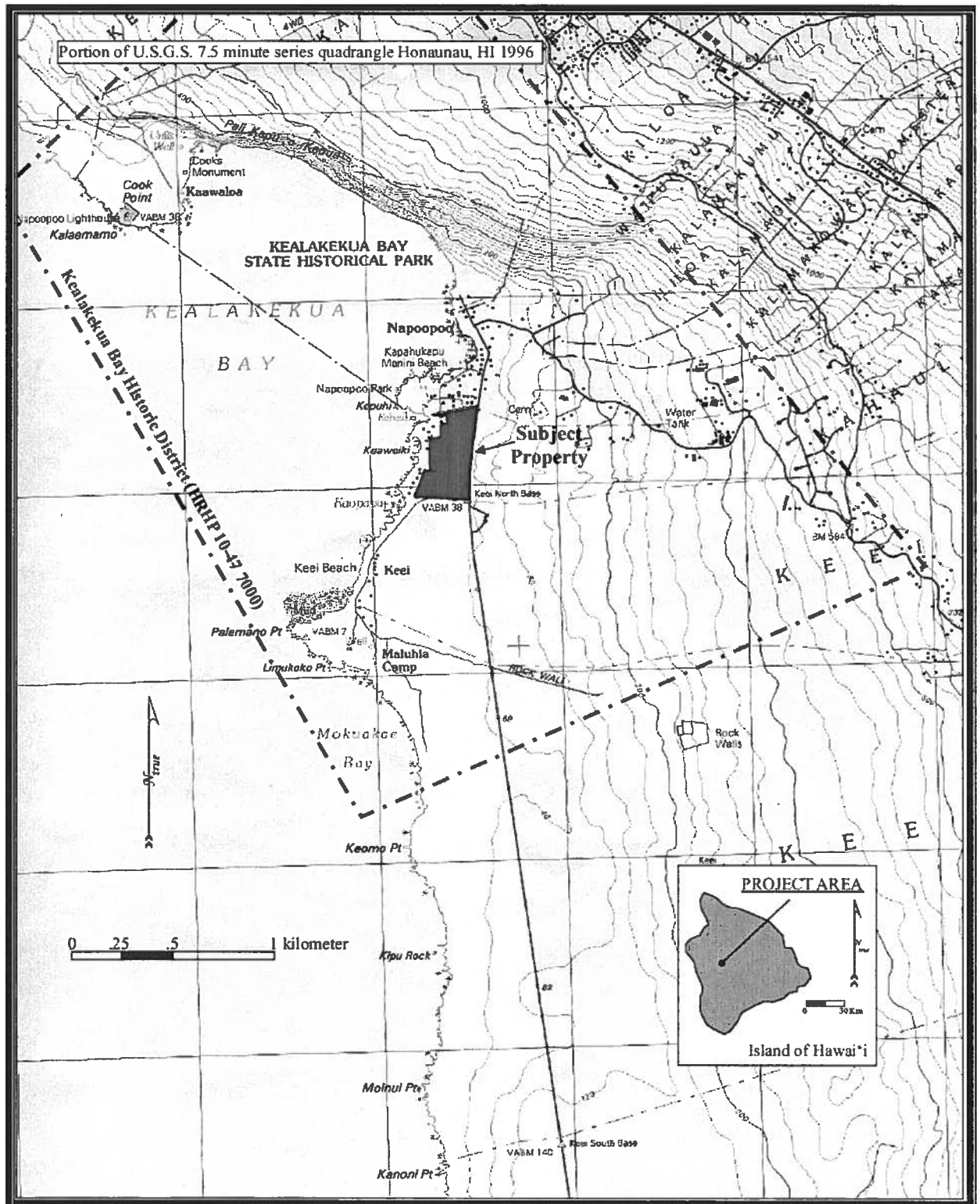
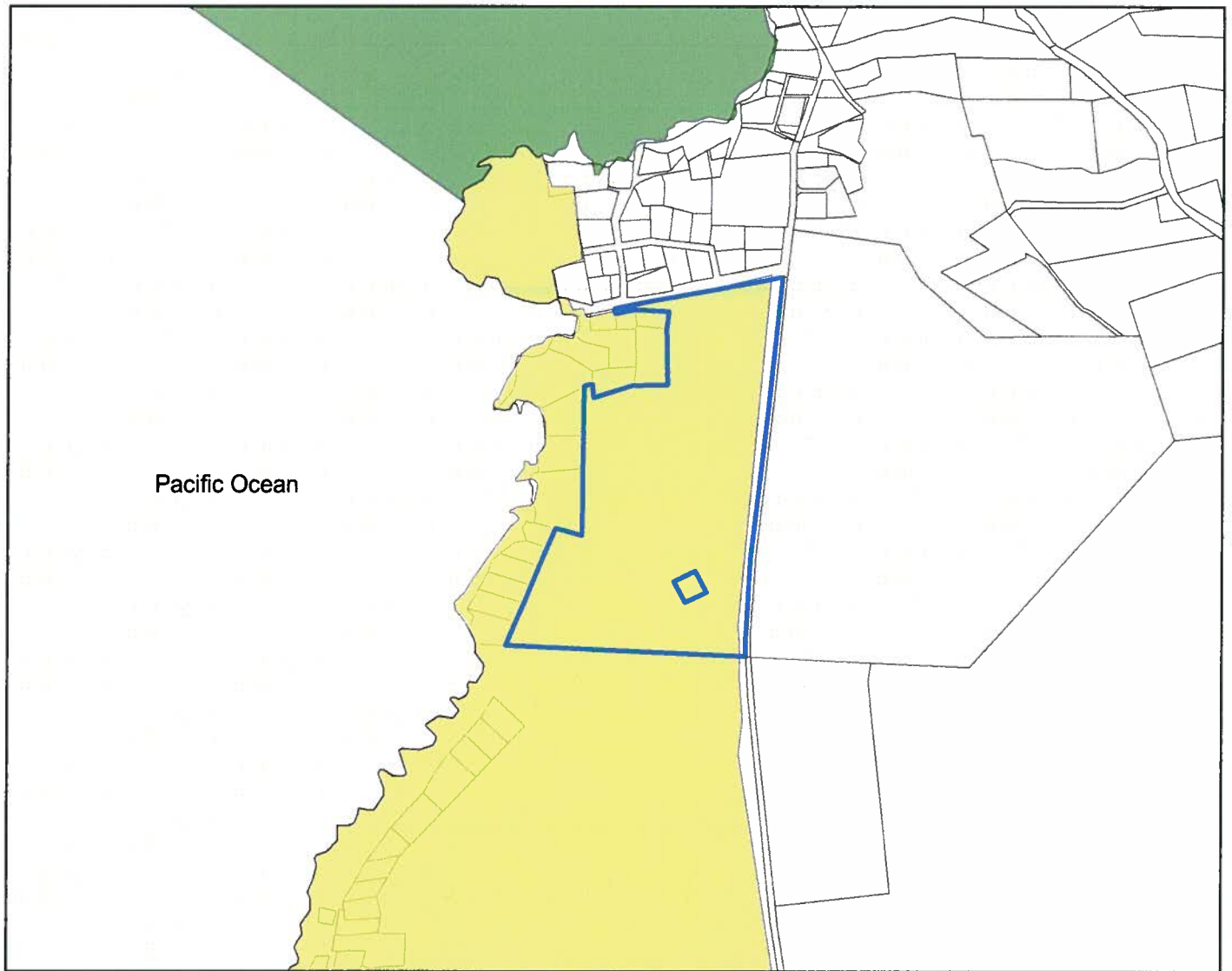


Figure 1. Location Map

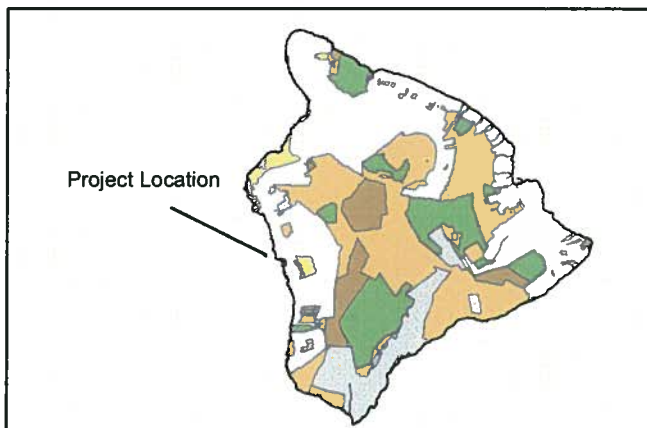
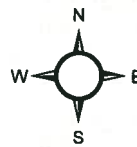
EXHIBIT 1

Subject
property
TMK: (3) 8-3-005:001

Subzone Map for TMK: (3) 8-3-005:001



0 12.5 25 50 75 100 Miles



Legend





-  General
-  Limited
-  Protective
-  Resource

EXHIBIT 3



Figure 4. Aerial Photograph of Area with Gate Locations

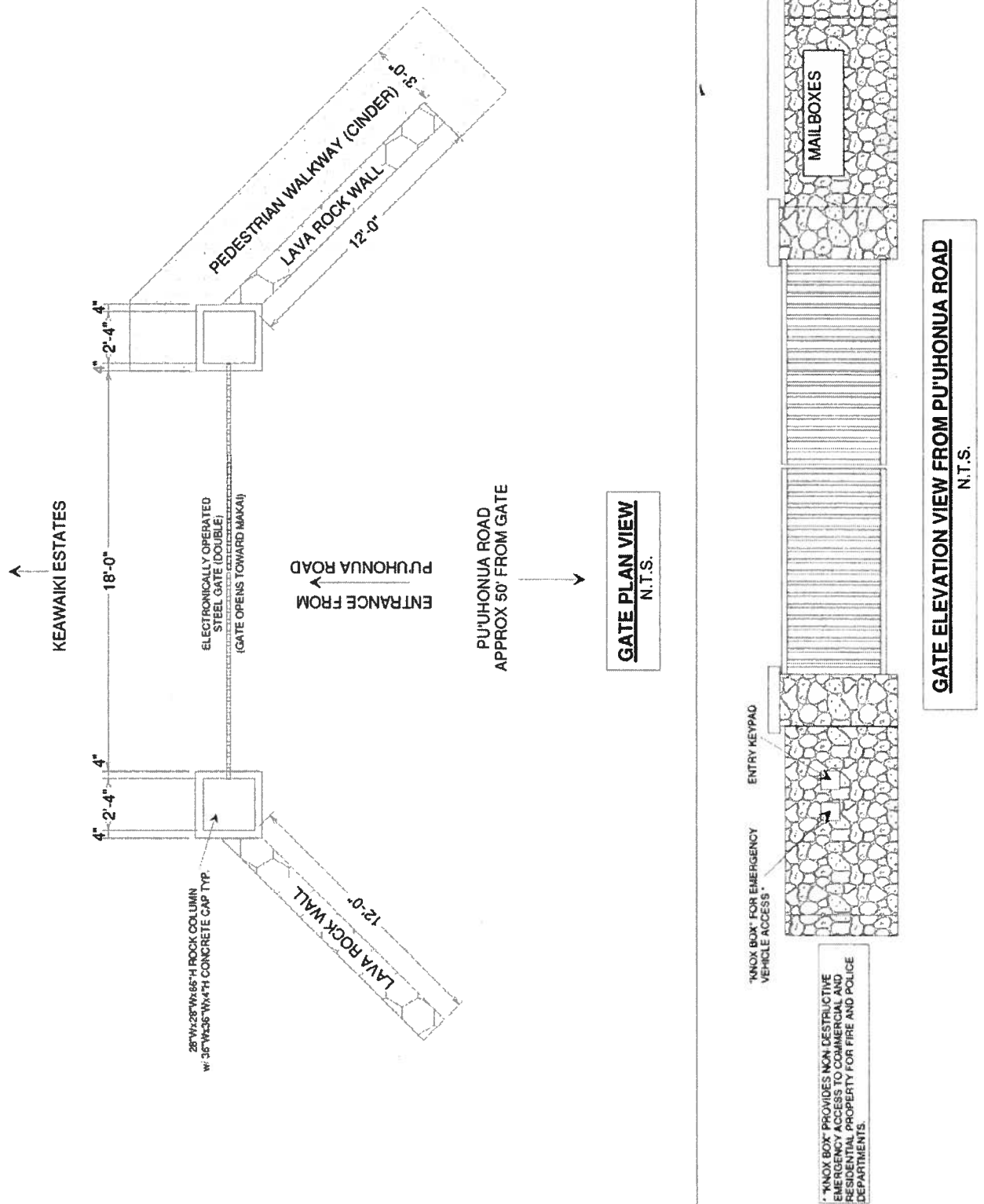
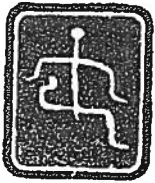


Figure 5. Gate Plan with Elevation

7mC 8-3-5:1



NA ALA HELE
Hawaii Trail & Access System

PLANNING DEPARTMENT
COUNTY OF HAWAII

2009 DEC 15 PM 1:22

December 14, 2009

Ref: H09:14 Kahauloa

TO: Clement Chang, Trails Specialist

FROM: D. Moana Rowland, Abstractor *DMR*

SUBJECT: Special Management Area Use Permit Assessment Application
(SAA 09-000496) regarding Installation of Two Security Gates On
Keawaiki Road, designated as Tax Map Key: 8-3-5-1, situate at
Kahauloa, South Kona, Island and County of Hawaii

Research has been completed pursuant to your request dated December 9, 2009. Examination of available records fails to disclose the alignment of a trail on a map predating 1892. Without the necessary evidence documenting the trail's existence in accord with the mandates of the Highways Act of 1892, ownership of said trail could not be confirmed in favor of the State of Hawaii.

c: BJ Leithead Todd, Planning Director ✓
Theresa Donham, SHPD

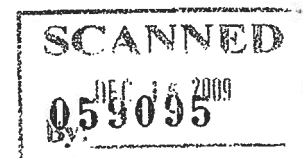


EXHIBIT 6

Malama Pono Kealakekua
Cultural and Planning Committee
82-6012 Manini Beach Road
Ka'awaloa, Hawaii 96704
Phone (808) 9361479
gordonleslie@hawaii.rr.com committee chairperson

RECEIVED
HAWAIIAN CONSERVATION
DISTRICT LANDS
2010 JAN -7 A 8:12
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

January 05, 2010

Ron Terry, Principal
Geometrician Associates LLC
PO Box 396
Hawaii 96721

RE: DRAFT ENVIRONMENTAL ASSESSMENT
(GATING OF EXCESS ROADS IN THE CONSERVATION DISTRICT AT
KAHAULOA)
TMK (3rd): 8-3-005:001 Kahauloa, South Kona, Island of Hawaii, State of
Hawaii

Dear Mr. Ron Terry,

Thank you for the opportunity to review the aforementioned Draft Environmental Assessment for Chuck and Diane Bundrant. I received your packet the later part of November 2009.

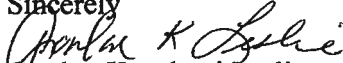
1) After reviewing your Draft EA I discovered several misleading and wrong information. I will comment first of my telephone conversation with someone who called me for information on the trail at Keawaiki. That interview took about ten minutes. I did not tell the individual my father lost the 24.55 acre parcel tmk 8-3-005:001 to Bishop Estate, Kamehameha Schools because he was more interested in fishing than he was with Tax matters, he was a responsible and diligent tax paying citizen. What I told him was, prior to Bishop Estates effort to quite title this land in the 1960's, my grandfather Henry Leslie Sr. spent \$350,000.00 in legal fees, and lost 3000 acres in the Kahauloa 2 and Keei 1 Ahupuaa by court judgment in favor of Bishop Estate KS from lands that were never conveyed to Pauahi Bishop by the original LCA recipient Kalua Apana Simerson. My father knew it was hopeless to challenge the Might of Bishop Estate so he choose to go fishing instead, causing him to lose this land by default. He was a commercial fisherman. This land too was never conveyed to Pauahi Bishop by Kalua Apana Simmerson.

EXHIBIT 7A

- 2) It was then that Bishop Estate KS bulldozed most of the archeological sites on the present Keawaiki subdivision and destroyed the ancient Hawaiian trail the Ala Kahakai that connected Kahauloa road to the Keei village, the sacred Palemano point, And the Mokuohai battle field.
- 3) As a child we used the trail frequently to access the fishing and wana koa fronting this property. After Bishop Estate KS acquired this land through court judgment they created a vehicular dirt road (Keawaiki road) that partly runs parallel to the destroyed 1500 hundred year old ala kahaki alanui.
- 4) People from this village have taken the opportunity to use Keawaiki road as it is a shorter and smoother road. Also Emergency Units (Police, Fire Rescue, and Ambulance) use this rout to get to Keei village when there is an emergency or when the village needs to evacuate during a tsunami evacuation. Locking this access could have a life or death situation when dealing with heart attack patience's.
- 5) In the 1980's Bishop Estate wanted to extend the Keawaiki subdivision along the existing Keei beach road impacting the only road to the village and the trail that Kamehameha marched his armies to battle on the Mokuohai battle field, due to the importance of that historical event, the County Planning Commission, the County Council, the State Historic Preservation Division, The Napoopoo, Keei, Hoonanau Community Association,(now Malama Pono Kealakekua) and Papa Lyman President of Bishop Estate all decided that the plan should be abandon.
- 6) This EA mentions of the many archeological features on this property that will be protected by the installation of these gates. True there are many archeological features on this aina, but there are no known burial sites. A comprehensive archeological preservation plan should be a requirement for Bishop Estate KS and or the applicant. The threat of these sites being further damaged will be from the 17 lot owners and their guest as none of these archeological sites are visible or near the Keawaiki Road, and they are the only ones that have access to all these sites.
- 7) This EA claims that these gates will afford more security for the 17 lot owners. To the best of our knowledge there were no security breached on the Keawaiki subdivision in the last 40 years.
- 8) It is clear Chuck and Diane, owners of perhaps the world's largest fish distributing company want to create their own gated community, and that is all good, however as recent malahini arrival to our village, they want to take away our historical alanui kahakai, that is not pono. If it's a gated community they want to live in, there are many choices on the Kona coast.

- 9) In addition all of the Government Document you submitted along with your EA are previous request that goes beyond the scope of what you are requesting now and they should not be submitted with your Final Environmental Assessment for this application.
- 10) Mike is correct to say what he said; the Board of Directors of Malama Pono Kealakekua is involved with Community issues when it comes to the big picture. However the Cultural and planning Committee are active with the day to day responsibility of community concerns. Attach is a recent letter to the State of Hawaii from Malama Pono Kealakekua.
- 11) It is our position that there should be a community meeting for everyone in the village so they can share their concerns, we will be glad to assist with organizing or facilitating a meeting for this application.
- 11) Should the applicant choose to beautify the entrance to Keawaiki Road without the gates, we are sure the community would embrace that idea.

Sincerely



Gordon Kanaknui Leslie

Chairman Cultural and Planning Committee
Malama Pono Kealakekua

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS that HENRY A. LESLIE, SR., widower, of Napoopoo, Kona, County and State of Hawaii, hereinafter called the GRANTOR, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other valuable consideration to him in hand paid by HENRY A. LESLIE, JR., and MARY K. LESLIE, husband and wife, whose residence address is Napoopoo, Kona, County and State of Hawaii, and whose post office address is RR#1, Box 199, Captain Cook, Hawaii, hereinafter called the GRANTEES, receipt of which sum is hereby acknowledged, does hereby grant, bargain, sell and convey unto the said GRANTEES, as tenants by the entirety, all of the following described property:

ONE (1) ACRE, MORE OR LESS OF

ALL that certain piece or parcel of land situated at Kahauloa-2nd, South Kona, County and State of Hawaii, designated on State Tax Maps as Tax Key 8-3-05-1, containing an area of 24.55 acres, more or less.

Being a portion of the same premises conveyed unto the Grantor herein by Deed of Rose Simerson Reeves, dated February 2, 1962, and recorded with the Bureau of Conveyances of the State of Hawaii in Liber 4216, Pages 175-176.

TOGETHER with all and singular the rights tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the same unto the said Grantees, as tenants by the entirety, to the survivor of them, and to such survivor's heirs and assigns, in fee simple forever.

AND the said Grantor for himself, his heirs, executors, administrators and assigns, hereby covenants and agrees to and with the Grantees that upon the execution of this conveyance he is seised of said property in an estate in fee simple, and that the same is free and clear of all encumbrances and said Grantor further covenants and agrees that he will WARRANT and DEFEND the fee simple title conveyed and intended to be conveyed against the lawful claims of all persons.

IN WITNESS WHEREOF the said Grantor has hereunto set his hand this 19th day of July, 1963.

APPROVED AS TO FORM

By *[Signature]*
Sumio Nakashima

[Signature]
HENRY A. LESLIE, SR.

STATE OF HAWAII)
 : SS.
COUNTY OF HAWAII)

On this 19th day of July, 1963, before me personally appeared HENRY A. LESLIE, SR., to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

SEAL

[Signature]
Notary Public, Third Judicial Circuit
State of Hawaii

My Commission Expires: May 8, 1964

EXHIBIT 7
7E

MICHAEL J. MATSUKAWA

ATTORNEY AT LAW
TERRITORIAL CENTRE, SUITE 201
75-5751 KUAKINI HIGHWAY
KAILUA-KONA, HI 96740
TELEPHONE NO. (808) 329-1385
FAX NO. (808) 329-0512

December 1, 2009

Department of Land and Natural Resources
Division of State Parks
P.O. Box 621
Honolulu, HI 96809

RE: KEALAKEKUA STATE HISTORICAL PARK

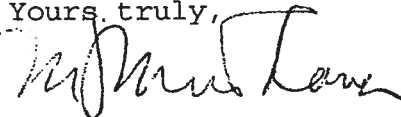
Dear Sir:

Regarding the so-called Proposed Master Plan Update, please find copies of the following enclosures:

1. Stipulation to Settle Claims Raised in Action and to Dismiss Action; Order, Civil No. 00-1-0223K;
2. My letter dated March 14, 2002 to the Division of State Parks;
3. Letter dated October 6, 2000 from Office of Environmental Quality Control; and
4. Resolution of the non-executive directors of Malama Pono Kealahou, Inc.

I believe these documents are self-explanatory. Malama Pono Kealahou will be monitoring the so-called Proposed Master Plan Update process closely to assure that all applicable laws are complied with.

Yours truly,



Michael J. Matsukawa

MJM:jff\misc\malamadl.lt1

Encs.

xc: Attorney General
Chairperson, DLNR
Office of Environmental Quality Control
Belt Collins Hawaii, Ltd.
Gordon K. Leslie
Skycliff Ranch LLC
Malama Pono Kealahou

EXHIBIT 7.F

geometrician

ASSOCIATES, LLC

integrating geographic science and planning

phone: (808) 969-7090 PO Box 396 Hilo Hawaii 96721 rterry@hawaii.rr.com

January 29, 2010

Gordon Leslie
Malama Pono Kealakekua
Cultural and Planning Committee
82-6012 Manini Beach Rd.
Captain Cook HI 96704

**Subject: Response to Comments on Conservation District Use
Application HA-3530 and Draft Environmental Assessment for
Gating of Access Roads in the Conservation District at
Kahauloa, TMK: (3) 8-3-005:001, Kahauloa, South Kona
District, Island of Hawai'i**

Dear Mr. Leslie:

Thank you for your comment letter dated January 5, 2010, on the Draft EA and CDUA. As some of your comments pertained more to Kamehameha Schools (KS) than to the applicants for the CDUA, Chuck and Diane Bundrant consulted with KIS in preparing the following answer to your specific comments:

1. *Cultural consultation.* The information you are referring to in the EA was taken directly from the Cultural Impact Assessment for the project prepared by Dr. Bob Rechtman. As I understand it, Dr. Rechtman has since spoken to you about the telephone conversation he had with you regarding the history of the area. The statements that you referred to as incorrect have been removed from both the CIA and the Final EA.

2-3. *Bishop Estate's bulldozing of archaeological sites, including a heiau.* KS acknowledges your statement that the ancient Hawaiian trail no longer exists. Please note that the applicants had no part in any destruction of sites and have planned his activities to protect, rather than harm, remaining sites.

4. *Shortcut and Emergency Response.* The "shortcut" is actually longer in distance, although because the road is better maintained (by the Keawaiki Beach Lots residents, at their personal expense), it takes slightly less time to travel. Better maintenance of the Ke'e Road would make it actually faster for access to Ke'e. No member of the general

EXHIBIT 76

public will be blocked from receiving emergency services by the proposed gating action. Only those who have given written concurrence to support this application are potentially impacted. The "Knox Box" lock is able to be opened by emergency services for those residents within the Keawaiki Beach Lots.

5. *Bishop Estate's former subdivision plans.* KS acknowledges your account of past plans. The former plans are not actually relevant to the applicants' matter at hand.

6. *No known burial sites; need for comprehensive preservation plan; threat to archaeological sites is from residents, not others.*

A prior archaeological study conducted by Francis Ching in 1971 identified at least nine archaeological sites within the subject property. Among these sites, Ching recorded two burial complexes. Professional archaeologists observed and mapped these sites along with numerous others within the boundaries of the overall subject property during a more recent reconnaissance study conducted for the current project. During this more recent study additional potential burial features were also noted by the archaeologists.

The State Historic Preservation Division has reviewed the proposed gate installation and determined that no historic properties would be affected. SHPD did not recommend preparation of a preservation plan in conjunction with this proposal.

It is the lessee's intention to complete an archaeological inventory survey of the entire property prior to the issuance of any additional permits beyond that which is currently being sought. Once that study has been completed, a comprehensive preservation plan will also be prepared. One of the goals of the current proposed project is to enhance the immediate protection of the archaeological sites that exist within the overall property.

The residents of Keawaiki Beach Lots do not agree that they are a threat to archaeological sites, and they have personally witnessed the destruction of sites by illegal campers, who may have been unaware that the sites were present.

7. *Security of Keawaiki Beach Lots.* This concern about security is based on reports from the residents of the lots, who do have personal knowledge of problems, including illegal camping, theft, drug use, and reckless driving.

8. *Gated community.* Please note that the County does not maintain the roads, and therefore having them open to the public creates a burden upon the owners. Furthermore, a special gate and cindered walkway will be established adjacent to the gate structure for the express purpose of facilitating pedestrian travel, and the roads will continue to be open to pedestrian access, unlike a gated community.

9. *Early consultation letter.* The inclusion of the responses was appropriate, because the action as originally proposed included the gates as well as a single-family home and landscaping. There would tend to be more but not different concerns with the original proposal, as it involved more area and more activities.

EXHIBIT 74

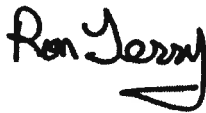
10. *Malama Pono Kealakekua status*. Thank you for the clarification about the active status of Malama Pono Kealakekua, and because of your active involvement there is better information in the EA.

11. *Community meeting*. Hawai'i Administrative Rules Section 13-5-40 requires a review by DLNR to determine if a public hearing related to the subject request is required prior to consideration by the Board of Land and Natural Resources. Should the Department suggest such a meeting, the Board will arrange for the meeting and staff it with personnel from the DLNR. The applicants will fully support the decision made by DLNR.

12 (2nd 11 in your letter). *Beautifying entrance to Keawaiki Road would be welcomed*. We acknowledge this comment.

We very much appreciate your review of the document. If you have any questions about the EA, please contact me at (808) 969-7090.

Sincerely,

A handwritten signature in black ink that reads "Ron Terry". The signature is stylized with a large, sweeping "R" and a cursive "Terry".

Ron Terry, Principal
Geometrician Associates

Cc: Sam Lemmo, DLNR-OCCL

EXHIBIT 7E



Sam J
Lemmo/DLNR/StateHiUS
02/16/2010 01:02 PM

To Audrey T Barker/DLNR/StateHiUS@StateHiUS
cc
bcc
Subject Fw: Kahauloa, Keel Trail and Gates

FYI

Samuel J. Lemmo, Administrator ><))))>
Office of Conservation and Coastal Lands
Department of Land and Natural Resources
1151 Punchbowl Street
Honolulu, Hawaii 96813
Phn (808) 587-0377
Fax (808) 587-0322
www.hawaii.gov/dlnr/occl

----- Forwarded by Sam J Lemmo/DLNR/StateHiUS on 02/16/2010 12:50 PM -----

From: Dennis Hart <dennishart47@yahoo.com>
To: Sam Lemmo <sam.j.lemmo@hawaii.gov>
Date: 02/16/2010 12:57 PM
Subject: Kahauloa, Keel Trail and Gates



Aloha.docx

EXHIBIT 8A

Aloha,

My Name is Dennis Kau'I Hart. This letter is in regard to the gate at Kahauloa, Keei (CDUA HA 3530) and the destruction of our trail that is now under the homes and properties in that area; TMK: 8-3-005-001.

There is a concern about the possible illegal building of a swimming pool, without a permit that is either on or below the high water mark. Also of concern is the Naupaka and foliage growth which is blocking coastal access. On the coastal frontage there are approximately seventeen homes and/or land owners. There are many possible violations that have been seen and some pictures have been taken to show these infractions.

It is possible that many of these infractions are not able to be seen by trying to access this coastal frontage. There is little if any access to our beach to gather; picking opihi, shoreline fishing, or the gather of wana.

On some of these properties, private walkways from homes are either on or below the high water mark.

I am speaking for the long time residents and descendants of this area in Kahauloa, Keei. We are very concerned about the gates being erected as it will hide more wrongful doings to our beach frontage. As far as we understand; this so called private road, ***was built for the public in place of the destruction of our trail***. This road has been traversed by the public from as early as the 1960's which far exceeds the seven (7) years of which I believe is called, "Prescriptive Easement". (Correct me if I am wrong). A few of us attended the Na Ala Hele meeting Wednesday evening, January 27, 2010, to voice our concerns about this road where they want to erect two gates (One at the entrance and the other at the exit) . We feel that this road was built for the replacement of our then destroyed trail; "Ala Kahakai, Trail by the sea. Therefore, this road has been considered our trail. If this road is not considered as our trail, we want our trail back.

Sometime back, some of us used a Kona Court House Library to get information on past court cases that were similar to this. It was found that in many past cases from the 1800's to the middle of the 1900's that many of the structures that were built, whether it be a stonewall, shack, house, etc., were ordered by the Judge or court to be disassembled and removed. No matter how old these structures were, they were ordered to be removed. We feel that no one has or has had the right to block our trails in any way, then and now.

I refer to the, "Highways Act", of 1892 and also the, "Splintered Paddle Law", of Kamehameha the First, of which one or both laws are still in effect. One section says that we are not to be molested while on our trails in any way or any one.

We feel a great wrong will be committed to us by erecting these gates. These gates will only serve these landowners, including Kamehameha Schools' (Bishop Estate), for their own gated community. An Environmental Assessment was done for this area in November of 2009, by Bob Rechtman of Rectman Consulting, LLC at 507-A E. Lanakila Street, Hilo-Hawaii, 96720.

EXHIBIT 8B

We hope you find this letter to be acted upon and be used as a legal document for the pending Environmental Impact Study.

Aloha and Mahalo,

Dennis Kau'I Hart

Address:

P.O. Box 1441

Kealahakua, Hi 96750

PH: (808) 937-6039

Email: dennishart47@yahoo.com

EXHIBIT 8c



Post Office Box 1101
Kamuela, Hawaii 96743
Phone (808) 880-1455
Fax (808) 880-1456
gmooers@hawaii.rr.com

2010 FEB 18 P 1:15

CONSERVATION &
NATURAL RESOURCES
STATE OF HAWAII

February 16, 2010

Audrey Barker
Office of Conservation and Coastal Lands
P.O. Box 621
Honolulu, Hawaii 96809

Re: Conservation District Use Application (CDUA HA-3530)
TMK: (3) 8-3-005:001, 020, & 021
Kahauloa, South Kona, Hawaii
Applicant: Charles and Diane Bundrant

Dear Audrey:

Thank you for forwarding the comment letter from Dennis Kau'i Hart on the application identified above. As you noted in your transmittal to me it is too late to include a response in the Environmental Assessment process, but not too late to include a response for your staff review of the CDUA. I truly appreciate this opportunity to address Mr. Hart's concerns, and to complete the record.

The first four paragraphs and paragraphs six and seven refer to the alleged destruction of a trail that is not on the subject property and is not in any way related to the proposed gating of these private roads. Na Ala Hele previously researched the history of trails in this area and determined that there was no evidence of this alignment of a trail on any map predating 1892, and that absent such evidence, ownership of the trail could not be confirmed in favor of the State of Hawaii. This issue was addressed in two previous CDUPs that I am aware of.

It is noted that pedestrian access will not be denied on these private roads, only vehicular gating is proposed and pedestrian paths will be associated with the gates to insure pedestrian access is uninterrupted. Please see the exhibits associated with the application.

In regard to paragraph seven, Dr. Bob Rechtman did not prepare an Environmental Assessment for the subject area. It was prepared by Dr. Ron Terry.

I hope this addresses the issues raised by Mr. Hart. If you or your staff has any questions, or if you require additional information, please contact me. Thank you for your prompt review of this application.

Sincerely,



Gregory R. Mooers
President

EXHIBIT 8D